IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1547 OF 2005

Pandurang Baburao Vyavhare ...Appellant
Vs.
Chabubai Baburao Vyavhare & Ors. ...Respondents

Mr D.V. Sutar for the Appellant.
Mr P.J. Das for the Respondent No.1.

CORAM : A. S. OKA, J.
DATE : MARCH 07, 2006.

P.C.:

1. The Second Appeal is by the original Defendant No.1. The Respondent No.1 is the seventy-two year old unmarried sister of the Appellant. The Respondent Nos. 2 and 3 are the other two Defendants.

2. The case of the Respondent No.1-original plaintiff in short is that in partition amongst the co-sharers, namely, the Appellant and the Respondent Nos.2 and 3 herein, the suit property was allotted to her share. Her case is that when she was not well and was hospitalised, the Appellant encroached upon the property allotted to her and constructed a shed. Therefore, a suit was filed by the Respondent No.1 for declaration and for removal of encroachment. One of the defendants i.e. the real brother of the Respondent NO.1 supported the Respondent No.1. The present Appellant contested the suit by filing written

statement. The contention of the Appellant was that the Respondent No.1 and her sisters have relinquished their shares in the suit property in his favour. During pendency of the suit, a compromise admittedly signed by all the parties to the suit was filed on the record of the Trial Court. In the said compromise, the Appellant and other defendants admitted the partition and the fact that separate possession of the suit property was handed over to the Respondent No.1-Plaintiff. By the said compromise, the present Appellant agreed to remove the shed constructed by him on the suit property. In the written statement filed by the Appellant, a contention was raised that his signature was obtained on the compromise pursis by practicing fraud. The Trial Court dismissed the suit. The Appellate Court relying upon the evidence on record as well as the compromise pursis filed by the parties accepted the case of the Respondent No.1-original plaintiff and passed a decree of declaration and removal of encroachment.

3. The learned Counsel appearing for the Appellant submitted that though compromise filed in the Trial Court was signed by the Appellant, it was not acted upon by the parties as the signature of the Appellant was obtained on the compromise pursis by

practising fraud. He submitted that there was no appropriate description of the suit property in the plaint and therefore, decree for removal of encroachment could not have been passed. He submitted that there is no evidence of partition.

4. I have considered the submissions. The Appellate Court has noted that there was evidence on record to show that there was a partition between the parties and the suit property was allotted to the share of the Respondent No.1. The Appellate Court observed that evidence on record clearly shows that the Appellant and the Respondent Nos.2 and 3 were residing in their respective houses constructed in the areas allotted to their respective share. The Appellate Court also noted that the Respondent No.1 being unmarried and being a ‘devdasi’ her father ensured that the share allotted to her was equal to that of her three brothers. The other sisters of the Respondent No.1 had relinquished their right, title and interest in the larger property.

5. The Appellate Court found that though in the written statement a contention was raised by the Appellant that his signature on the compromise was obtained by fraud, the Appellant could not lead

evidence to substantiate plea of fraud. The Appellate Court pointed out that the Appellant has served as a teacher for more than thirty-five years and therefore, if any fraud or force would have been really practised, he would certainly have approached the Police Station. The Appellate Court, therefore, came to the conclusion that there was lawful compromise on record which was admittedly signed by the parties and the Trial Court ought to have acted upon the compromise. As stated earlier, in the compromise the Appellant and the Respondent Nos.2 and 3 have admitted the factum of partition and the fact that suit property was allotted to the share of the Respondent No.1-plaintiff. Apart from considering other evidence on record the Appellant Court came to the conclusion that one brother of the Respondent No.1 and her three sisters supported her case.

6. So far as the dispute regarding the identity of the property is concerned, it is admitted that by filing the compromise pursis, the Appellant agreed to remove the encroachment made by construction of shed. No substantial question of law arises. Second Appeal is dismissed. No orders as to costs.

JUDGE